

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

SPENCER CHARLES PARKER                   §  
v.   §       CIVIL ACTION NO. 9:06cv144  
STATE OF TEXAS, ET AL.                   §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Spencer Parker, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the complaint, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed because Parker had previously filed at least three lawsuits or appeals which had been dismissed as frivolous or for failure to state a claim, and had therefore accumulated three strikes pursuant to 28 U.S.C. §1915(g). The Magistrate Judge observed that Parker did not pay the full filing fee or show that he was in imminent danger of serious physical injury as of the time that the lawsuit was filed, and consequently recommended dismissal of the action. The Magistrate Judge also recommended that should Parker pay the full filing fee within 15 days of the date of entry of dismissal, that he be allowed to proceed in the lawsuit as though the full fee had been paid from the outset.

Parker did not file objections to the Magistrate Judge's Report. Instead, on April 12, 2007, he filed a motion asking for additional time in which to pay the full filing fee. Because Parker did not object to the Magistrate Judge's Report, he is barred from *de novo* review by the district judge

of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. However, the Magistrate Judge's Report will be modified, in accordance with Parker's request for an extension of time, so as to provide that if Parker pays the full filing fee within 60 days of the date of entry of final judgment, he will be allowed to proceed with the lawsuit. Upon payment of this fee, Parker should specify that the fee is directed to cause no. 9:06cv144, styled Parker v. State of Texas, et al. It is therefore

ORDERED that the Report of the Magistrate Judge, as modified, is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to its refiling as an *in forma pauperis* lawsuit, but without prejudice as to the refiling of this action upon payment of the full filing fee and without seeking *in forma pauperis* status. It is further

ORDERED that should Parker pay the full filing fee within 60 days of the date of entry of the final judgment, the lawsuit will be reopened and he will be allowed to proceed as though the full fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **23** day of **April, 2007**.



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Ron Clark, United States District Judge